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SIXTH SESSION

Saturday, April 25, 1914, 11 o'clock a.m.

The business session of the Society convened immediately upon the adjournment of the Conference on the Teaching of International Law and Related Subjects, with Mr. GEORGE G. WILSON presiding.

The CHAIRMAN. The first order of business is the report of the Recording Secretary. May I state that all here are entirely welcome to remain whether members of the Society or not.

Mr. JAMES BROWN SCOTT. Mr. Chairman, upon the suggestion of Mr. Root in his official capacity as President of the Society, and indeed at his request, I desire to lay before the meeting very briefly a few suggestions which he has made, which, if carried out, will go far to create an interest in international law where it does not exist, and to strengthen that influence where fortunately it does exist.

In the second article of the constitution of the American Society of International Law, dealing with the objects of the Society, it is stated that the object of the Society is to foster the study of international law and promote the establishment of international relations on the basis of law and justice.

This clear enunciation of the value and service which international law, based upon the principles of law and justice, may have, is followed by a concluding sentence stating that for this purpose the Society will coöperate with all societies in this and other countries having the same object.

The purpose of the suggestion of Mr. Root is to call attention to the fact that sometime ago, with his coöperation, and indeed with his active support, steps were taken to create in each capital of the American republics, local societies of international law, and that at the present day societies either actually exist or are in process of formation in Mexico, Brazil, Argentina, Chile and Peru. In order to supply the connecting link between the national societies of international law it has been proposed, largely following the example of European publicists, to establish what may be called an American Institute of International Law, the membership of which shall be composed of

representatives of the various local societies recommended by such societies, but elected by the members of the American Institute. It is the suggestion and the desire of the President of this Society that the American Society of International Law shall indicate in a formal way its willingness to coöperate with the various societies formed and to be formed in the various countries of the Western Hemisphere, and that the American Society of International Law authorize the President of this Society to take the necessary steps to effectuate this relation by the selection of some members of the American Society of International Law who have had experience in Latin affairs, with Latin American countries, and who are known to the publicists of those countries, to form what may be considered the nucleus of a representation in the American Institute when it is finally constituted.

I make this suggestion and accompany it with a motion, designed in vague terms, because at the present moment we are not in a position to make more definite plans; but I believe, sir, that we can afford to entrust the necessary steps to be taken to give effect to the resolution to the President of the Society, who is not only deeply interested in international law in our country, but profoundly interested in the creation of an interest in international law in each and every one of the Latin American countries. I would therefore, sir, conclude these brief remarks by a motion that the President of the American Society of International Law be authorized to take such steps as in his judgment and wisdom may seem proper to coöperate and establish the relationship referred to with the American Institute of International Law.

The CHAIRMAN. You have heard the motion of Mr. Scott. Is the motion seconded?

The motion was seconded.

The CHAIRMAN. Are there any remarks?

The motion was unanimously agreed to.

The CHAIRMAN. The next in order is the report of the Committee on Codification.

Mr. SCOTT. Mr. Chairman, on behalf of the Committee on Codification, I beg leave to present a report merely in the nature of progress, and to request that the Committee on Codification be continued.

The CHAIRMAN. You have heard the report and the recommendation. What action will you take upon the recommendation that that Committee be continued?

Mr. HULL. I move that the Committee be continued. The motion was seconded and unanimously agreed to.

The CHAIRMAN. Has the Recording Secretary any other report to present?

Mr. SCOTT. There is no other business to present.

The CHAIRMAN. Is there any report from the Corresponding Secretary?

Mr. CHARLES HENRY BUTLER. I have no report to present except that I have corresponded with various people who wanted to join the Society.

The CHAIRMAN. If there is no objection, the report of the Corresponding Secretary will be received.

The CHAIRMAN. Are there other reports that should be made at this time? We will hear the report from the nominating committee.

MR. F. C. PARTRIDGE. The nominating committee, the chairman of which is presiding over this meeting, makes the following report:

President,

Honorable Elihu Root.

Vice-Presidents,

Chief Justice White,
Justice William R. Day,
Hon. P. C. Knox,
Mr. Andrew Carnegie,
Hon. Joseph H. Choate,
Hon. John W. Foster,
Hon. George Gray,

Hon. William J. Bryan.

Hon. William W. Morrow,
Hon. Richard Olney,
Hon. Horace Porter,
Hon. Oscar S. Straus,
Hon. Jacob M. Dickinson,
Hon. James B. Angell,
Hon. William H. Taft,

Members of the Executive Council to serve until 1917,

Hon. Richard Bartholdt, Missouri. Gen. George B. Davis, District of Columbia. Prof. Charles Noble Gregory, District of Columbia. Hon. A. J. Montague, Virginia. Rear Admiral Charles H. Stockton, District of Columbia. Charles B. Warren, Esq., Michigan. Hon. John Sharp Williams, Mississippi. Prof. Theodore S. Woolsey, Connecticut.

For member of the Executive Council to serve until 1916, in place of the late Senator Bacon,

Hon. Henry Cabot Lodge, Massachusetts.

The CHAIRMAN. You have heard the report of the nominating committee. What is your will?

Upon motion, duly made and seconded, the Secretary was directed to cast a single ballot for the nominees.

The Secretary reported that the ballot had been cast and the gentlemen nominated were accordingly declared elected to the respective offices.

The CHAIRMAN. The next is the report of the Committee on Honorary Members.

MR. JACKSON H. RALSTON. Mr. Chairman, on behalf of the Committee I desire to place in nomination for honorary membership Mr. Pasquale Fiore.

I might say just a few words to acquaint the members with Mr. Fiore's history. He is at present Royal Italian Senator, member of the Council on Diplomatic Affairs, and of the Institute of International Law; professor of international law in the University of Naples, since 1880. Born at Terlizzi in the Province of Bari, April 8, 1837; educated in the University of Naples; professor of philosophy in the Liceo di Cremona, 1861-63, of international law in the University of Urbino, 1863-65, University of Pisa, 1865-75, University of Torino, 1875-80. Author of the following publications: Constitutional and Administrative Law, 1 vol., 1862; Modern International Public Law, 1 vol., 1865 (translation into French by Pradier, 1868); Elements of International Private Law, 1869 (translation into French with annotations and preface by Pradier, 1875; translation into Spanish by A..

Garcia Moreno, with preface by C. Martos, 1878, 6th Italian edition, 1905); Bankruptcy According to International Private Law, 1873; International Effects of Civil Judgments, 1874; International Effects of Penal Decisions and of Extradition, 1877; Treatise dealing with International Penal Law and Extradition, 2 vols., 1880 (translation into Spanish); The European Question, a Solution, 1890; Treatise upon International Public Law, 3 vols., 1879, 4th edition, 1904 (translation into French with annotations by C. Antoine, 2d edition, 1885; translation into Spanish); General Rules upon the Publication of the Laws, 2 vols., 1886-87; Treatise upon International Private Law, 4 vols., 1888, 4th edition; General Rules for the Publication, Application and Interpretation of Laws, vol. II, 1890; 2d edition, 1908; Citizenship and Marriage, 1 vol., 1909; International Law Codified, 1 vol., 1890, 4th edition, 1909 (translation into French, 1st edition 1890, 2d edition, 1911); Questions of Law with Reference to Controverted Cases, 1904; Monographs dealing with Adoption, Diplomatic Agents, Divorce, Juridical Personality of the State, etc., etc.

The Committee has felt that in proposing a name it should be that always of a man who has performed eminent distinguished services in the development of international law rather than a man whose fame was perhaps based upon a single instance. We have therefore felt amply justified in presenting the name of Signor Pasquale Fiore.

It was moved and seconded that the report of the committee on honorary membership be adopted and that Signor Fiore be elected to honorary membership.

The CHAIRMAN. Signor Pasquale Fiore has been in active service as a contributor to international law for fifty years, and some of his recent contributions—and I think those who have followed them will bear out the statement—are equal to any of the earlier ones, and his activity in recent years has been decidedly marked in the field of strictly scientific contribution. Two years ago, also, he was a guest of this Society and its speaker at the opening meeting.

The question of the election of Signor Fiore to honorary membership, having been duly seconded, was put and carried.

Mr. SCOTT. Mr. Chairman, on behalf of the Executive Council, I rise to say a few words as to the loss which the Society has sustained in the death of one of its most distinguished honorary members. I refer to the late T. M. C. Asser, who for some time has been an honorary member of the Society. He was born in 1836 and he died in 1913. A lawyer by profession and a teacher in the University of Amsterdam, he took a deep and a keen interest in the practice of his profession until his government desired his full services rather than occasional services. He was appointed a member of the Council of State.

His contributions have covered the field not merely of public international law, by means of articles appearing in various journals devoted to international law and public law, but he was a specialist of the greatest authority in the conflict of laws. His little treatise published in the Dutch language in the year 1880 on private international law was translated into French by his colleague and friend, Professor Rivier. The treatise has been translated into various languages, and it is not too much to say that it has become a classic, and that during his lifetime.

But, great as were the services of Mr. Asser to the theory of international law, whether it be public or private, his services of a constructive nature have been even greater, and the agencies which he created or helped create and set in motion have endowed international law with organs apt to give effect to theory and to development and to act as a guide in practice.

In the year 1869, in conjunction with M. Rolin-Jaequemyns and the late Professor Westlake, who also was an honorary member of this Society, he founded the *Revue de droit international et de législation comparée*, this being the first journal in any language devoted to international law, both public and private. It is unnecessary to dwell upon the services which this journal has rendered. It pointed the way and has been the model of all subsequent journals which have been established, dealing with one or other of these two important subjects.

A few years later—to be accurate, in 1873,—he was one of the founders of the Institute of International Law, the services of which to the cause of international law, public and private, especially to its development and advancement, can not be overestimated. He was honored by the presidency of the Institute which he helped create, and at the time of his death was to have been elected its honorary president.

But this, sir, is not all. He called into being the conferences on private international law which have been held from time to time at The Hague. He suggested that conferences of an official nature to deal with international private law should be called, and The Nether-land Government listened to his recommendations. He presided over each and every one of these conferences, and the results achieved by them are in no slight degree due to his great interest and to his skill in their management.

At the First Hague Peace Conference, assembled in 1899, he was a delegate of his government and an active participant, and especially influential in securing the establishment of the Permanent Court of Arbitration. At the Second Hague Peace Conference, held at The Hague in 1907, he also was a delegate of his country and is largely responsible for its constructive measures.

In the last few years of his life he devoted himself especially to the cause of advancing the scientific teaching and exposition of international law by means of an academy of international law to be established at The Hague and to be installed in the Peace Palace. A proposition to that effect had been made at the Second Hague Conference but was not carried out. A committee of Dutch publicists was formed through his initiative which, after several years of arduous labors, secured, in conjunction with a committee of the Institute of International Law, the establishment of the Academy on the 12th day of January of the present year. Unfortunately, Professor Asser was no more. It is a great regret that he could not have lived to be present at the formal opening of that institution by the Dutch Government in the month of September of this year.

It is especially to be regretted for another reason, because in personal conversation and in various letters he hoped, although his health was not of the best, that his days might be lengthened to see what he regarded as the crowning effort of his life, namely, the establishment of this academy.

In conclusion, sir, I desire to say that few men have lived who have devoted their lives with such singleness of purpose to the scientific study and propagation of wise and progressive ideas on the subject of international law, public and private; and few men have lived, too, who have displayed such constructive imagination in the creation of agencies, which will survive him for many years, and keep his

memory green and advance the cause after his death, for which he labored so incessantly and with such success during his lifetime.

I would like to ask, sir, that a minute be entered in the proceedings expressing our deep regret at the loss which not merely this Society but international law has suffered in the death of Mr. Asser.

Mr. RALSTON. Mr. Chairman, may I add just a word to what has been said by Dr. Scott?

There is one phase of Mr. Asser's activities which were not touched upon, and that was his connection with international arbitrations. Without undertaking to go into detail upon that point, as the matter comes up rather unexpectedly to me at the moment, I may say that Professor Asser figured in at least two arbitrations in which the United States was concerned, both of which, as it happened, were in the year 1902. The first arbitration was that with reference to the sealing claims between the United States and Russia, and the two nations agreed to settle the dispute, which was done in a manner which was certainly satisfactory to the United States and acceptable as well to Russia.

Later, in the course of the same year, Professor Asser was a member of the first tribunal of the Hague Permanent Court of Arbitration, sitting to determine the differences between the United States and Mexico with regard to what was known as the Pious Fund Claim. It was in that connection that it was my fortune to know Professor Asser and to come in practically daily contact with him for some six or eight weeks. It would not be invidious to say that, among the five members of the court then sitting, there was no one more widely accomplished than Professor Asser. He was skilled in literature and in languages as well as in all phases of law. At the same time it was a pleasure to appear before him because of his constant urbanity and because of the frequent and continual manifestations, I may say, of his enlightened intellect.

All who were there must remember him with the greatest possible degree of pleasure and with the belief that his voice and his influence, his clearness of vision, had much to do with what we at least regarded as the correct result obtained at that time by that court. We must therefore all sincerely regret that he has passed from us.

The CHAIRMAN. Are there any other remarks? The motion, as I understand it is that the Society concur in the sentiments expressed by the last two speakers and that their remarks be incorporated in the minutes of the Society as a fitting record in memory of Professor Asser.

The motion was duly seconded, put and unanimously carried.

The CHAIRMAN. Is there any other business before the Society?

MR. PHILIP BROWN. Mr. Chairman, since I withdrew from the diplomatic service four years ago I have endeavored to secure some claim to respectability by identifying myself with several very learned societies, including this Society, and I attended the annual meetings of several of these societies with a great deal of interest, but I venture to make this observation in regard to these meetings that I have attended: It has seemed to me that each of the societies in turn has in a sense failed to justify these annual meetings by a lack of sense of direction, if I may say it, in having a large number of very interesting papers read with very little time for discussion and without any attained results other than the impression that each may carry away.

It has always seemed to me that each one of the gentlemen who addressed the Society is so interested in his own paper, naturally, that he can hardly hear the other papers. That is to say, each man hears the sound of his own but can not hear the sound of the others; that, in other words, these societies are not deliberative. They do not do more than come together in a pleasant social way and listen to these papers, which are in due course of time published and can be read by any one. It would seem to me that this purpose could be served very well by having these papers secured and written and furnished without necessarily being read. At any rate, I would like to venture to make this suggestion, that it would be very desirable if this Society should take one step forward—and it seems to me that this particular session of the Society has demonstrated that such a step is possible—and constitute ourselves in another year into a *deliberative* assembly to discuss definite questions of international law.

I wish to pay my respects to the wisdom and judgment of the Executive Council of this Society in the way it has started and fostered this Society. I am aware that the Council has met this situation with admirable judgment, and I would only desire at this time to make this suggestion, that another year we should aim to discuss a definite topic of international law with the purpose of reaching a con-

clusion. I should like to feel myself part of a deliberative assembly of that nature because it seems to me that the time has come when international law associations should feel that they have a solemn duty to perform in the creation of law. The creation of sentiment, of course, I suppose, necessarily must precede the creation of law. In the propaganda for peace and in the interest that has been created in this particular Society, we have the sentiment; but now the serious task still remains, namely, of the creation of law.

The last Pan American Conference, as you all know, created a commission of jurists to undertake the serious study of a large number of extremely important questions of international law, most of which relate particularly to this hemisphere; questions which really are vital, because of the fact that out of these questions have arisen very many of the unpleasant incidents not only between European Powers and Latin American states, but between ourselves and Latin American states.

Gentlemen, it seems to me that this Society has a chance to assist in that magnificent work, to give an impetus to it, and that if we will from year to year take up these topics and fill in the gap so far as we can by our recommendations, we will be helping in this glorious work of the substitution of law for war.

I do not propose to make a definite recommendation or resolution. I ask the privilege of making these personal remarks, knowing that the Executive Council will welcome any suggestions of this nature. I do not know today how we could possibly work it, but I venture to suggest something of this nature,—that a committee should be appointed to study some of our questions of international law, such as, for example, the rights of foreign creditors; how may foreign creditors proceed against states that are in debt; or such topics as the rights of foreigners in times of civil disturbances; the rights of foreigners in matters of tort; that such a committee should present its report in writing through the Journal of International Law in time for every member to read that report before coming up to the annual meeting, and that then we might all come prepared seriously to discuss, and be prepared, after such discussion, to vote some form of recommendation as expressing the sentiment of this learned body on such topics.

I must ask your pardon for having spoken at such length and perhaps not as clearly as I would desire, but I feel very earnestly about

this question, and I would like very much to present this as a suggestion for the Executive Council to consider.

Mr. SCOTT. I should like to express an appreciation of the remarks which Mr. Brown has made, and to declare myself thoroughly in accord with his views.

I do not think the Society needs a justification, and I shall not enter upon one. The difficulty always is to start something, and then, after it is started and is an existing and powerful organization, to give it direction along other and different lines from those which might have been in the minds of its founders. Our purpose was and is to foster the study of international law and to promote the establishment of international relations on the basis of law and justice,—a purpose broad enough, general enough, and yet at the same time technical and limited enough to give full effect to the suggestion made by Mr. Brown.

It is a matter which has been uppermost with me for a number of years. I believe the time has come when we can take definite steps, and I also believe that the difficulty in so doing is not so great as Mr. Brown seems to suggest. It is very easy, indeed, to arrange the annual meeting in such a way as to combine both elements, the technical and popular, as to meet the desires of those who are primarily interested in the technical discussion of the development of international law, and at the same time to be a source of pleasure, profit and instruction to those whose interest in international law and in international relations is more general and less technical.

The method by which that can be accomplished is in my opinion the following: Limit our popular discussions or utterances to the evening sessions, and devote the morning and afternoon sessions to technical discussions, which discussions are not of a kind to attract the public, but are calculated to interest teachers and practitioners in international law.

If it be the desire of the Society, expressed formally in this meeting or informally in communications to the Executive Council, that this plan be followed, arrangements can be made for a meeting and the discussion of the kind proposed by Mr. Brown, without in any way affecting the popular element of the Society, so that instead of reaching one class exclusively or appealing more particularly to one class, we will be able to gather up within the confines of our sessions

all elements which, working together, can advance the cause of international law and promote the establishment of international relations on the basis of law and justice.

Mr. Chairman, I therefore welcome the suggestion which Professor Brown has made and I should be very happy indeed, so far as I am concerned, if the meeting would express itself in favor of the plan that he proposes.

The CHAIRMAN. There is no motion, but it is a proper subject for discussion. It seems to me a motion might be made to this effect, that recommendation should be made to the committee in charge of the annual meeting that provision be made for a program including constructive consideration of international law. That would meet, perhaps, the idea which Mr. Brown has in mind.

Mr. BROWN. Yes, sir.

Mr. HULL. I make such a motion.

The motion was duly seconded, put and carried.

The CHAIRMAN. Is there any other business? If not, a motion to adjourn is in order.

On motion duly made and seconded, the Society adjourned at 11:45 o'clock a.m., *sine die*.